

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

NICHOLE GEIST
5226 Castor Ave.
Philadelphia, PA 19124,

Plaintiff,

v.

IOVINE BROTHERS BAR AND GRILL,
INC. d/b/a MOLLY MALLOY'S
Reading Terminal Market
1136 Arch St.
Philadelphia, PA 19107.

Defendant.

CIVIL ACTION

CASE NO.:

JURY TRIAL DEMANDED

CIVIL ACTION COMPLAINT

Plaintiff Nichole Geist (hereinafter referred to as "Plaintiff") hereby complains as follows against Defendant and avers as follows:

INTRODUCTION

1. This action has been initiated by Plaintiff against by Iovine Brothers Bar and Grill, Inc. (hereinafter referred to as "Defendant") for violations of the Americans with Disabilities Act, as amended ("ADA" - 42 U.S.C. §§ 12101 *et. seq.*); the Pennsylvania Human Relations Act ("PHRA"); and the Philadelphia Fair Practices Ordinance, Philadelphia Code § 9-1100 *et seq.* ("PFPO").¹ Plaintiff asserts, *inter alia*, that she was unlawfully terminated by Defendant and suffered other economic harm as detailed herein. As a direct consequence of Defendant's unlawful actions, Plaintiff seeks damages as set forth herein.

¹ References to the PHRA and PFPO are made herein only for notice purposes. Plaintiff's case was administratively closed with the EEOC and she has thus been required to timely initiate the instant lawsuit. However, she will seek leave to amend this complaint by adding identical claims (as alleged under the ADA) under the PHRA and PFPO once such claims are also fully administratively exhausted.

JURISDICTION AND VENUE

2. This Court, in accordance with 28 U.S.C. 1331, has jurisdiction over Plaintiff's claims because this civil action arises under a law of the United States.

3. This Court may properly maintain personal jurisdiction over Defendant because Defendant's contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendant to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in International Shoe Co. v. Washington, 326 U.S. 310 (1945) and its progeny.

4. Pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2), venue is properly laid in this district because all of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district. Plaintiff also properly exhausted her administrative remedies to proceed with the cause of actions as set forth herein.

PARTIES

5. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

6. Plaintiff is an adult individual, with an address as set forth in the caption.

7. Defendant Iovine Brothers Bar and Grill, Inc. ("Defendant") is an entity incorporated in Pennsylvania which owns and operates a restaurant within the Reading Terminal Market named Molly Malloy's.

8. Upon information and belief, because of their interrelation of operations, common ownership or management, centralized control of labor relations, common ownership or financial controls, and other factors, Defendant, along with Iovine Brothers Inc. d/b/a Iovine Brothers Produce (hereinafter "IBP") are sufficiently interrelated and integrated in their activities, labor

relations, ownership and management that they may be treated as a single and/or joint employer for purposes of the instant action.

9. At all relevant times herein, Plaintiff was jointly employed by Defendant and IBP. Defendants and IBP, upon information and belief, had overlapping management and shared resources.

10. Upon information and belief, IBP and Defendant share employees.

11. According to the Pennsylvania Department of State, Defendant and IBP have the similar or similar management structure.

12. IBP utilizes the address 45 N. 12th St., Philadelphia, PA 19107, which is Reading Terminal Market, which is where Defendant is located.

13. Defendant, individually or collectively with IBP,² employed fifteen (15) or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

14. At all times relevant herein, Defendant acted by and through its agents, servants, and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for the benefit of Defendant.

FACTUAL BACKGROUND

15. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

16. Plaintiff was employed with Defendant for approximately six months as a staff member in the kitchen at Molly Malloy's.

² See *Nesbit v. Gears Unlimited, Inc.*, 347 F.3d 72 (3d Cir. 2003), *cert. den'd*, 541 U.S. 959, 124 S. Ct. 1714, 158 L. Ed. 2d 400 (2004) (employees of multiple entities can be aggregated for the purposes of meeting the 15 employee threshold of Title VII). The 15 employee threshold of Title VII is identical to the 15 employee requirement of the ADA. See *Clackamas Gastroenterology Assocs. v. Wells*, 538 U.S. 440, 449 n.7, 123 S. Ct. 1673, 155 L. Ed. 2d 615 (2003); *Kohn v. AT&T Corp.*, 58 F. Supp. 2d 393, 419 (D.N.J. 1999).

17. While employed with Defendant, Plaintiff performed her job well and was a dedicated and hard-working employee.

18. In or about January of 2017, while working for Defendant, Plaintiff sustained a work-related injury to her foot, consisting of third-degree chemical burns from chemicals used at Defendant.

19. Plaintiff still experiences foot pain as a result of the injuries sustained in the aforementioned accident.

20. As a result of the aforesaid injuries, Plaintiff has been and continues to be substantially limited in several major life activities, including but not limited to – at times – working, walking, running, exercising and other life activities.

21. Plaintiff reported her injury to Defendant's management, including but not limited to Theresa Iovine (high-level manager), and filed a worker's compensation claim shortly after being injured at work.

22. After sustaining her aforesaid work-related injury, Plaintiff requested reasonable accommodations in the form of time off from work for her injuries and medical treatment.

23. Initially, Plaintiff only missed approximately two days from work; however, as her condition began to worsen, Plaintiff was placed out of work from on or about January 13, 2017 through on or about February 3, 2017.

24. Upon her return to work, Plaintiff also requested accommodations from Defendant in or about February of 2017 including but not limited to infrequent pain breaks for pain flare-ups and occasionally having to attend medical appointments.

25. After returning from her medical leave of absence on or about February 3, 2017, Plaintiff was treated with hostility and animosity by Defendant's management, including but not

limited to treating her in a rude and demeaning manner, belittling her, and closely scrutinizing her work.

26. On or about February 15, 2017, Plaintiff was abruptly terminated from her employment with Defendant for completely pretextual reasons.

27. Defendant's management, including James Iovine (part owner of Defendant), Theresa Iovine, and Vincent Iovine (part owner of Defendant) informed Plaintiff that she was being terminated alleged because she had comped a burger for another manager within Reading Terminal Market, a common practice of employees within Defendant. In fact, Plaintiff's manager gave her his manager's code in order process comps on other occasions and told her she can use it whenever she needs to.

28. Plaintiff believes and therefore avers that she was terminated: (1) because of her actual, perceived and/or record of disabilities; (2) in retaliation for requesting reasonable accommodations for her health conditions; and/or (3) in retaliation for complaining of discrimination.

Count I

Violation of the Americans with Disabilities Act, as amended ("ADA") ([1] Actual/Perceived/Record of Disability Discrimination; and [2] Retaliation)

29. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

30. Plaintiff has and continues to suffer from qualifying disabilities under the ADA, including but not limited to foot injuries, which at times limits her ability to perform some daily life activities.

31. Defendant discriminated against and retaliated Plaintiff by terminating her because of her: (1) known, actual and/or perceived health problems; (2) record of health problems; and/or (3) because of her requested accommodations.

32. These actions as aforesaid constitute violations of the ADA.

WHEREFORE, Plaintiff prays that this Court enter an Order providing that:

i. Defendant is to compensate Plaintiff, reimburse Plaintiff and make Plaintiff whole for any and all pay and benefits Plaintiffs would have received had it not been for Defendant's illegal actions, including but not limited to past lost earnings, future lost earnings, salary, pay increases, bonuses, medical and other benefits, training, promotions, pension, and seniority. Plaintiff should be accorded those benefits illegally withheld (if determined that there are such benefits) from the date she first suffered discrimination/retaliation at the hands of Defendant until the date of verdict;

ii. Plaintiff is to be awarded punitive damages (in accordance with the Statutes she is suing under), as permitted by applicable law, to punish Defendant for its willful, deliberate, malicious and outrageous conduct and to deter Defendant or other employers from engaging in such misconduct in the future;

iii. Plaintiff is to be awarded damages for her emotional distress, humiliation and/or pain and suffering as permitted by law (under applicable Statutes);

iv. Plaintiff is to be awarded the costs and expenses of this action and reasonable legal fees as provided by applicable federal and state law;

v. Any verdict in favor of Plaintiff is to be molded by the Court to maximize the financial recovery available to Plaintiff in light of the caps on certain damages set forth in applicable federal law; and

vi. Plaintiff's claims are to receive a trial by jury to the extent allowed by applicable law. Plaintiff has also endorsed this demand on the caption of this Complaint in accordance with Federal Rule of Civil Procedure 38(b).

Respectfully submitted,

KARPF, KARPf & CERUTTI, P.C.

/s/ Ari R. Karpf
Ari R. Karpf, Esquire
Adam C. Lease, Esquire
3331 Street Road
Two Greenwood Square, Suite 128
Bensalem, PA 19020
(215) 639-0801
Attorneys for Plaintiff

Date: September 19, 2017

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

NICHOLE GEIST

CIVIL ACTION

v.


IOVINE BROTHERS BAR AND GRILL, INC.
D/B/A MOLLY MALLOY'S

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

<p>9/19/2017</p> <hr/> <p>Date</p>	 <hr/> <p>Attorney-at-law</p>	<p>Plaintiff</p> <hr/> <p>Attorney for</p>
<p>(215) 639-0801</p> <hr/> <p>Telephone</p>	<p>(215) 639-4970</p> <hr/> <p>FAX Number</p>	<p>akarpf@karpf-law.com</p> <hr/> <p>E-Mail Address</p>

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 5226 Castor Ave, Philadelphia, PA 19124

Address of Defendant: Reading Terminal Market, 1136 Arch Street, Philadelphia, PA 19107

Place of Accident, Incident or Transaction: Defendant's place of business
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities? Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☐
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☐
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☐
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☐

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☒ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify) _____

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify) _____
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Ari R. Karpf, counsel of record do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: 9/19/2017

Attorney-at-Law

ARK2484

Attorney I.D.# 91538

NOTE: A trial de novo will be a trial by jury only if there has been compliance with P.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 9/19/2017

Attorney-at-Law

ARK2484

Attorney I.D.# 91538

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

GEIST, NICHOLE

(b) County of Residence of First Listed Plaintiff Philadelphia

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Karpf, Karpf & Cerutti, P.C.; 3331 Street Road, Two Greenwood Square, Suite 128, Bensalem, PA 19020; (215) 639-0801; akarpf@karpf-law.com

DEFENDANTSIOVINE BROTHERS BAR AND GRILL, INC.
d/b/a MOLLY MALLOY'SCounty of Residence of First Listed Defendant Philadelphia

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	1	1	Incorporated or Principal Place of Business In This State	4	4
Citizen of Another State	2	2	Incorporated and Principal Place of Business In Another State	5	5
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input checked="" type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- Xi Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Americans w/ Disabilities Act "ADA" (42USC12101)

Brief description of cause:

Violations of the ADA, PHRA and the Philadelphia Fair Practices Ordinance.

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMANDS

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE 9/19/2017

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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